



Federal Court of Australia
District Registry: New South Wales
Division: General

No: NSD362/2016

PETERSEN SUPERANNUATION FUND PTY LTD ACN 136 059 562
Plaintiff

BANK OF QUEENSLAND LIMITED ABN 32 009 656 740 and another named in the
schedule
Defendant

ORDER

JUDGE: JUSTICE YATES

DATE OF ORDER: 06 October 2017

WHERE MADE: Sydney

THE COURT ORDERS THAT:

1. Pursuant to s 33J of the *Federal Court of Australia Act 1976* (Cth) (the **Act**), 14 December 2017 at 4.00pm AEST be fixed as the date and time on or before which a group member may opt out of this proceeding (**Deadline**).
2. Group members be given notice pursuant to s 33X(1)(a) and s 33X(5) of the Act of the fact that they may opt out of this proceeding in accordance with Order 4 of these Orders.
3. The form and content of the 'Opt Out and Registration Notice' (**the Notice**), and the abridged version of the Notice, as annexed to these Orders be, and are hereby, approved pursuant to s 33Y(2) of the Act.
4. Pursuant to s 33ZF of the Act, any group member who wishes to opt out of this proceeding must, on or before 4.30pm AEDT on 14 December 2017, deliver to the New South Wales District Registry of the Court an opt out notice in the form of Schedule A to the Notice.
5. Pursuant to s 33Y(3) of the Act, the Notice be given to group members according to the following procedure:
 - (a) the second respondent is to provide by 4 p.m. on 13 October 2017 to the solicitors for the applicant and to a third party distribution agent to be agreed



between the parties (**Distribution Agent**) a schedule containing, according to the second respondent's records, the last known names, email addresses and / or postal addresses of persons and entities who the second respondent's records show have ever held a Money Market Deposit Account in respect of which a director, officer, employee or agent of Sherwin Financial Planners Pty Ltd or Sherwin Financial Planners Pty Ltd itself was authorised to act as an Authorised Signatory (**Class Member Contact Schedule**);

- (b) by the same time the second respondent is to notify the other parties of any post office boxes or addresses on the Class Member Contact Schedule which the second respondent believes to be associated with Sherwin Financial Planners Pty Ltd or any related entity;
- (c) the parties are promptly to confer as to what should occur in relation to potential group members for whom the only address held is a post office box or address believed to be associated with Sherwin Financial Planners Pty Ltd or any related entity. If the parties cannot reach agreement they are to promptly contact the Associate to Yates J to relist the matter;
- (d) the solicitors for the applicant are, until further order, to keep the contents of the Class Member Contact Schedule confidential;
- (e) the solicitors for the applicant are to instruct the Distribution Agent to cause the distribution of the Notice by 20 October 2017 to the email addresses and postal addresses (to the extent that such addresses have been provided) referred to in the Class Member Contact Schedule;
- (f) the solicitors for the applicant are to instruct the Distribution Agent to inform the solicitors for all of the parties of the details of any notices which are returned to the Distribution Agent undelivered;
- (g) continuously throughout the period from 20 October 2017 to 14 December 2017, the applicant's solicitors are to display the Notice on its website www.quinnemanuel.com;
- (h) as soon as practicable after 20 October 2017, the applicant is to cause to be published an abridged version of the Notice, as approved by the Court, in the following newspapers:



- (i) The Courier Mail, Queensland; and
 - (ii) The Rockhampton Bulletin.
- (i) continuously throughout the period from 20 October 2017 to 14 December 2017, the Notice is to be displayed on the class action page for this Proceeding on the website of the Federal Court of Australia and be available for inspection at the District Registry of the Court in Sydney, Melbourne, Canberra, Brisbane, Adelaide, Perth, Hobart and Darwin.
6. The costs of sending, displaying and publishing the Notice as described in Order 5 above be paid as follows:
 - (a) The cost of the providing a copy of the Notice to group members using email and/or postal addresses as provided for in Order 5(e) above, be initially paid by the applicant, on the basis that all of the above costs will subsequently fall to be dealt with by the Court as part of the costs of the proceeding; and
 - (b) the cost of publishing an abridged version of the Notice as required by Order 5(h) above be initially paid by the applicant, on the basis that all of the above costs will subsequently fall to be dealt with by the Court as part of the costs of the proceeding.
7. If, on or before 14 December 2017, the solicitors for any party receive a notice purporting to be an opt out notice referable to this proceeding, the solicitors file that notice with the Federal Court of Australia, NSW District Registry, within three (3) days of receipt of the notice by the solicitors and the notice be treated as an opt out notice received by the Court at the time it was received by the solicitors.
8. The parties' solicitors be granted leave to inspect the Court file and to copy any opt out notices filed by group members.
9. By the Deadline, Group Members who wish to register to participate in the distribution of any amount agreed in settlement of this proceeding must register by completing and submitting the registration form annexed as Schedule B to the Notice (**Group Member Registration Form**) to the Applicant's solicitors.
10. Pursuant to section 33ZF of the Act, and subject to any further order of the Court, any Group Member who by the Deadline does not register or opt out of the proceedings in accordance with the manner provided for in these Orders will:



- (a) remain a group member in this proceeding for all purposes of this proceeding, other than in (b), below; and
 - (b) not be entitled to receive a distribution from any settlement of this proceeding.
11. By 6 October 2017, the Applicant to provide the Respondents with the reviewer and system coding of the control set, training and QC rounds of the Applicant's technology assisted review of the documents provided by the liquidators of Sherwin Financial Planners Pty Ltd (and other related companies).
 12. By 12 October 2017, the Applicant provide any further particulars in accordance with order 15 of the orders made on 22 May 2017 (as varied by order 7 made on 26 July 2017).
 13. The Applicant be granted leave to amend the Amended Statement of Claim by 9 October 2017, in the terms of the Further Amended Statement of Claim attached to the email from Laura Weston of Quinn Emanuel dated 18 September 2017 with any additional further particulars provided in response to the requests made by the Respondents on 25 September 2017.
 14. By 13 October 2017, the Respondents file and serve any Defence to the Further Amended Statement of Claim.
 15. By 20 October 2017, the Applicant file and serve any Reply to the Defence to the Further Amended Statement of Claim.
 16. The Applicant pay the Respondents' costs, if any, thrown away be reason of the amendments to the Amended Statement of Claim.
 17. The parties attend a mediation by 31 January 2018 before a private mediator to be agreed by the parties or, failing agreement, to be nominated by the Chief Executive Officer of The Resolution Institute.
 18. The proceeding be listed for a further case management hearing on 11 December 2017.
 19. Liberty to apply upon 3 days' notice.



Date that entry is stamped: 9 October 2017

Warrick Soden
Registrar



Schedule

No: NSD362/2016

Federal Court of Australia
District Registry: New South Wales
Division: General

Respondent DDH GRAHAM LIMITED

CROSS CLAIM

Cross-Claimant BANK OF QUEENSLAND LIMITED ABN 32 009 656 740

Cross Defendant DDH GRAHAM LIMITED

CROSS CLAIM

Cross-Claimant BANK OF QUEENSLAND LIMITED ABN 32 009 656 740

Cross Defendant PETERSEN SUPERANNUATION FUND PTY LTD ACN 136
059 562

CROSS CLAIM

Cross-Claimant DDH GRAHAM LIMITED

Cross Respondent BANK OF QUEENSLAND LIMITED ABN 32 009 656 740



OPT OUT AND REGISTRATION NOTICE FEDERAL COURT OF AUSTRALIA

**Petersen Superannuation Fund Pty Ltd v Bank of Queensland & Anor
NSD 362/2016**

IMPORTANT: This Notice contains information about your legal rights.

1. Why are you receiving this Notice?

The Federal Court has ordered that this Notice be published for the information of persons who might be members of the class on whose behalf the action is brought and may be affected by the action (**the Class Members**). **You have been identified as a potential Class Member.**

You should read this Notice carefully. Any questions you have concerning the matters contained in this Notice should NOT be directed to the Court. If there is anything in it that you do not understand, you should seek legal advice.

2. Why is this Notice important?

This Notice contains important information about the background to the BOQ Class Action (as defined below). In particular, it tells you about:

- a) your right to **opt out** of the litigation; or alternatively,
- b) should you not wish to opt out and should you wish to **register to participate in the settlement of the class action** and receive any compensation that may become available if the class action settles, the Notice sets out the steps to register.

**The deadline to either opt out of or register to participate in any settlement of
the class action is 14 December 2017**

IMPORTANT: If you do nothing in response to the Notice (neither opt out nor register), you will lose any rights to any compensation from the class action if it settles, but will be bound by any such settlement. If the class action does not settle you will be bound by any judgment

3. What is a class action?

A class action is an action that is brought by one or more persons (the **Applicants**) on their own behalf and on behalf of a group of people against other persons (the **Respondents**) where the Applicants and the Class Members have similar claims against the Respondents.

Class Members **are not** individually responsible for the legal costs associated with bringing the class action. Generally, in a class action, only the Applicant is responsible for those costs.



Class Members are bound by any outcome reached in the class action, unless they **opt out** of the proceeding.

A binding result can happen in two ways: either by a judgment following a trial, or by a settlement which might happen at any time. If there is a judgment or a settlement of a class action, class members will not be able to pursue the same claims and may not be able to pursue similar or related claims against the respondent in other legal proceedings. Class Members should note that in a:

- (a) **judgment** following trial, the Court will decide various common factual and legal issues in respect of the claims made by the applicants and class members. Unless those decisions are successfully appealed, they bind the applicants, class members and the respondents. Importantly, if there are other proceedings between a class member and the respondents, it is likely that neither of them will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue decided in the class action.
- (b) **settlement** of a class action, where the settlement provides for compensation to class members, it may extinguish all rights to compensation which a class member might have against the respondents which arise in any way out of the events or transactions which are the subject-matter of the class action.

If you consider that you have claims against any respondent in the class action referred to in this Notice which are based on your individual circumstances or otherwise additional to the claims described in the class action, then it is important that you seek independent legal advice about the potential binding effects of the Class Actions before the deadline for opting out (see below).

The deadline is 14 December 2017.

4. What is an 'Opt Out'?

In a class action the Applicant does not need to seek the consent of Class Members to commence a class action on their behalf or to identify a specific Class Member. However, Class Members can cease to be Class Members by opting out of the class action. **Unless you opt out**, you will be bound by the outcome of the class action. This is explained further below.

5. What is the BOQ Class Action about?

On 11 March 2016, Petersen Superannuation Fund Pty Ltd ACN 136 059 562 (**Petersen**) commenced class proceedings against Bank of Queensland Limited ABN 32 009 656 740 (**BOQ**) and DDH Graham Limited ABN 28 010 639 219 (**DDH**) (the **BOQ Class Action**) on behalf of itself, and other persons, who invested money in a BOQ financial product, namely the "Money Market Deposit Account" (**MMDA**).

Petersen, together with other persons in the class (the **BOQ Class Members**), was advised by Sherwin Financial Planners Pty Ltd (**SFP**) and/or other persons and companies



associated with SFP (collectively **Sherwin**) to deposit funds into a BOQ MMDA for the purpose of investment.

Petersen alleges that Sherwin acted without authority and fraudulently in respect of the funds invested in Petersen's BOQ MMDA (the **Petersen MMDA**).

Petersen contends that BOQ and DDH, as operators and administrators of the Petersen MMDA, ought to have been on notice of any suspicious activity taking place, including any indicia of fraud, on the Petersen MMDA by Sherwin, pursuant to the obligations owed by BOQ and DDH to Petersen under the terms of the MMDA (the **Petersen Contract**).

BOQ and DDH deny Petersen's allegations and are defending the BOQ Class Action. Further to this, BOQ has filed a cross claim against Petersen. In effect, it alleges that if BOQ is found to have breached the Petersen Contract and the breach (or breaches) are found to have caused loss or damage to Petersen, that being the loss of Petersen's investment funds, then Petersen is liable to indemnify BOQ under the terms of the Product Disclosure Statement for its financial loss. Petersen denies BOQ's allegations and is defending the cross claim.

The BOQ Class Action is funded by a litigation funder, Vannin Capital Operations Limited (**Vannin Capital**). You can obtain a copy of Vannin Capital's Litigation Funding Agreement by contacting Quinn Emanuel Urquhart & Sullivan (**Quinn Emanuel**) on (02) 9146 3548 or by email meaganbertolatti@quinnemanuel.com

6. Are you a Class Member?

You are a BOQ Class Member to whom this proceeding relates, if:

- (a) you were advised by SFP or one or more of its directors, officers, employees or agents to deposit funds into a BOQ MMDA;
- (b) you entered into a contract with BOQ, and its agent DDH, in respect of a MMDAs;
- (c) a director, officer, employee or agent of Sherwin acted as an Authorised Signatory in respect of that MMDA;
- (d) you deposited funds into your MMDA; and
- (e) you have been unable to recover some or all of the funds deposited into your MMDA.

If you are unsure whether or not you are a BOQ Class Member, you should contact Quinn Emanuel on (02) 9146 3548 or email meaganbertolatti@quinnemanuel.com, or seek your own legal advice without delay.

7. Will you be liable for legal costs?

You will **not become liable for any legal costs** simply by remaining as a BOQ Class Member for the determination of common questions. However:

- (a) if any compensation becomes payable to you as a result of any order, judgment or settlement in the class actions, the Court may make an order that some of that



compensation be used to help pay a share of the costs which are incurred by the applicants in running the Class Actions but which are not able to be recovered from the respondents;

- (b) class actions are often settled out of court. If this occurs in the BOQ Class Action, you may be able to claim from the settlement amount without retaining a lawyer. In that event, the Court may nonetheless require you to contribute to the Applicants' own legal costs (as to which, see subparagraph (a) above); and
- (c) Petersen may also seek an order that part of any compensation that becomes payable to class members who have not signed a funding agreement with Vannin Capital is paid to Vannin Capital in return for Vannin Capital funding the action. Alternatively, Petersen may apply for orders that class members receive the same rate of return in the BOQ Class Action, whether or not they have signed a funding agreement with Vannin Capital.

If the BOQ Class Action is unsuccessful, Vannin Capital will pay Petersen's costs and will be liable to satisfy any order against Petersen to pay BOQ and/or DDH's costs.

8. What will happen if you do not opt out?

Unless you opt out, you will be bound by any settlement or judgment made in the BOQ Class Action. If the class action is successful you **may** be entitled to share in the benefit of any order, judgment or settlement in favour of the Applicant and Class Members, although you may have to satisfy certain conditions before your entitlement arises and you will need to register your interest in receiving compensation from any settlement (see 9 below).

If the action is unsuccessful or is not as successful as you might have wished, you will not be able pursue the same claims and may not be able to pursue related claims against the Respondents in other legal proceedings.

9. What you need to do

Option A: Register your interest in receiving compensation from any settlement

If you do not wish to opt out and if you wish to participate in any settlement of the class action you must complete the "Class Member Registration Form" enclosed with this Notice and post it to Quinn Emanuel at level 15, 111 Elizabeth Street, Sydney NSW 2000.

Registrations must be received by Quinn Emanuel before **4:00pm AEST on 14 December 2017**. Registrations received after this time will not be accepted with the result that you will be treated as having not responded to this notice (see Option C below). You can contact Quinn Emanuel on (02) 9146 3548 or email meaganbertolatti@quinnemanuel.com to be informed about the progress of the BOQ Class Action.

Option B: If you want to opt out

If you do not wish to remain a class member of the BOQ Class Action, you must opt out of the BOQ Class Action, by completing and returning the attached Opt Out Notice, prior to or on the Opt Out date, **14 December 2017**.



If you opt out of the class action, you will not be bound by or entitled to share in the benefit of any order, judgment or settlement in the BOQ Class Action, but you will be at liberty to bring your own claim against the Respondents provided that you issue Court proceedings within the time limit applicable to your claim (which time limit may or may not have already expired). If you wish to bring your own claim against the respondents you should seek your own legal advice about your claim and the applicable time limit prior to opting out.

If you wish to opt out of the BOQ Class Action you **must** do so by completing a "Notice of opting out by class member" (Schedule A to this Notice), and return it to the Registrar of the Federal Court of Australia at the address on the form.

IMPORTANT: the Notice must reach the Registrar by no later than 4:30pm AEDT on 14 December 2017, otherwise it will not be effective.

You should submit the **Notice of Opting Out** by Class Member if:

- (a) you qualify as a BOQ Class Member and you wish to opt out of the BOQ Class Action; or
- (b) you believe that you have been incorrectly identified as a BOQ Class Member, because you do not meet the criteria set out in the section headed "**Are you a class member?**" above.

Each class member seeking to opt out should fill out a separate form. If you are opting out on behalf of a company or business, please provide your name, the name of the company or business and your position within the company or business (e.g. director or partner).

Option C – Not respond to this notice

If you do nothing, you will remain a class member in the class action and you will be bound by any court judgment or settlement agreement. However, if there is a settlement agreement and if the settlement agreement provides for compensation to be payable, you will not be permitted to benefit from the settlement unless you have registered your interest in receiving compensation from settlement (see Option A above).

In other words, if you do nothing, you will lose your right to participate in any settlement of this class action, though you may (depending on the facts of your claim) still be able to benefit from any judgment in this class action if it does not settle.

10. Where can you obtain copies of relevant documents?

Copies of relevant documents, including the Originating Application, the Amended Statement of Claim, Defences and Cross Claim may be obtained by:

- (a) requesting an electronic or hard copy version of the document directly from Quinn Emanuel;
- (b) inspecting them during the hours of 10am and 3pm at the Sydney office of Quinn Emanuel; or



- (c) contacting a District Registry of the Federal Court (contact details are available www.fedcourt.gov.au).

Please consider the above matters carefully. If there is anything of which you are unsure, you should:

- (a) contact Quinn Emanuel on (02) 9146 3548 or by email, meaganbertolatti@quinnemanuel.com; or
- (b) seek your own legal advice.

You should not delay in making your decision.



Schedule A

Form 21
Rule 9.34

Opt out notice

No. 362 of 2016

Federal Court of Australia
District Registry: New South Wales
Division: General

**PETERSEN SUPERANNUATION FUND
PTY LTD ACN 136 059 562**

Applicant

**BANK OF QUEENSLAND LIMITED and Anor
ABN 32 009 656 740**

Respondents

To: The Registrar
Federal Court of Australia
New South Wales District Registry
Level 17, Law Courts Building
Queen Square Sydney NSW 2000

[Name of group member], a group member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that [Name of group member] is opting out of the above representative proceeding.

Date:

.....
Signed by [Name]
[Insert capacity eg group member / Lawyer
for the group member]



Schedule B

CLASS MEMBER REGISTRATION FORM

“BOQ Class Action”

Federal Court of Australia Proceeding NSD 362/2016

To: Quinn Emanuel
Level 15
111 Elizabeth Street
Sydney NSW 2000
Attention: Damian Scattini

The class member named below registers to participate in the settlement of the BOQ Class Action

SECTION A – DETAILS OF CLAIMANT	
Name of claimant:
MMDA account name(s) (if known)	
MMDA account number(s) (if known)	
Person completing this form (print):
Authority of person completing this form (e.g., company director, lawyer)
Telephone contact:
Email contact

SECTION B – CLASS MEMBER IDENTIFICATION (CIRCLE YES OR NO)	
Were you advised by Sherwin Financial Planners Pty Limited (SFP) or someone on its behalf to deposit funds into a Money Market Deposit Account (MMDA)?	Yes / No
Did you enter into a contract in respect of the MMDA by completing an application form contained in the MMDA Product Disclosure Statement titled “Bank of Queensland Money Market Deposit Account Managed by DDH Graham Limited”?	Yes / No
Have you been unable to recover some or all of the funds you deposited into the MMDA?	Yes / No



SECTION C – CLAIMANT’S ALLEGED LOSS	
<p>What is the amount you claim you have been unable to recover from your MMDA (please do not include any amount you withdrew or authorised to be paid or invested on your behalf– for eg, to the ATO or by signing an Application Form attached to a Prospectus to acquire notes issued by Wickham Securities Limited)?</p> <p>If you are not aware of the precise amount, please provide an estimate, in which case please specify you are providing an estimate only.</p>	<p>.....</p>
<p>Please attach to this form copies of any documents supporting your claim (by way of example only, written communications, including emails, between you and SFP; and account statements, investment tables or the like which were provided to you)</p>	<p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

SECTION D – SANDHURST CLASS ACTION (CIRCLE YES OR NO)	
<p>Have you signed a funding agreement with Litman Holdings Pty Ltd in respect of the separate class action in the Federal Court of Australia, <i>Graeme Clarke and Marion Clarke in their capacity as trustees of the G&M Clarke Superannuation Fund v. Sandhurst Trustees Limited</i> (Proceedings QUD591/2015) (Sandhurst Class Action)?</p>	<p>Yes / No</p>

SIGNED BY OR ON BEHALF OF EACH CLAIMANT:

.....
Capacity of the person signing (e.g., claimant, executor, lawyer or other capacity)

DATED: 2017



Abridged Notice

Notice to Class Members

Federal Court of Australia

Class Action against Bank of Queensland & DDH Graham

The Federal Court has ordered that this notice be published for the information of any persons or companies, who were advised by Sherwin Financial Planners Pty Ltd (**SFP**) and/or other persons and companies associated with SFP to deposit funds into a Money Market Deposit Account (**MMDA**) with the Bank of Queensland Limited which was operated by DDH Graham Limited, for the purpose of investment.

Quinn Emanuel Urquhart & Sullivan (**Quinn Emanuel**) acts for Petersen Superannuation Fund Pty Ltd which has commenced a class action in the Federal Court of Australia seeking compensation for persons who lost money invested by Sherwin Financial Planners Pty Limited and/or Bradley Sherwin from the Bank of Queensland Limited and DDH Graham Limited. Those persons on whose behalf this proceeding has been commenced are referred to in this notice as “Class Members”.

A class action can be commenced by one person on behalf of Class Members without the consent or involvement of the Class Members. However, Class Members can “opt out” of the proceedings.

If you wish to participate in any settlement in the proceedings then you must register by 4.00pm AEST on 14 December 2017. In order to register, please contact Quinn Emanuel at the details set out below.

If you do not want to remain as a Class Member then you must submit an “opt out” notice form to the NSW Registry of the Federal Court of Australia by 4:30pm AEDT on 14 December 2017.

If you do not “opt out” but do not register you will not be entitled to receive any payment that may be made to registered Class Members as a result of the settlement of the proceedings.

Information on how to opt out, together with further information regarding your rights in relation to this class action can be obtained by contacting Quinn Emanuel on (02) 9146 3548 or email meaganbertolatti@quinnemanuel.com.